



October 16, 2019

Honorable William Orrick  
United States District Judge  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: *In Re: Juul Labs, Inc. Marketing, Sales Practices and Products Liability Litigation*, MDL  
Docket No. 2913

Dear Judge Orrick:

The Public Health Advocacy Institute ("PHAI"), a non-profit legal advocacy organization based in Boston, Massachusetts, through attorneys Mark Gottlieb and Andrew Rainer, hereby applies for membership on the Plaintiff's Steering Committee in the referenced MDL case.

PHAI has been at the cutting edge of tobacco litigation for over 30 years, beginning with litigation to impose liability for the sales of cigarettes to minors, continuing with litigation to impose class wide liability for the deceptive marketing of cigarettes, and most recently, litigation to defend municipal bans on the sale of flavored tobacco products. It worked with the offices of Attorneys General to coordinate sharing of pleadings when dozens of states brought actions against cigarette manufacturers. In addition to participating directly or as *amicus curiae* in these cases, PHAI has hosted more than a twenty national conferences of attorneys and public health experts to provide training and support national tobacco litigation, and has served as an advocate for the interests of children and adults harmed by the tobacco industry's unfair and deceptive marketing practices.

The case that PHAI has filed against Juul Labs, Inc (*Murphy et al v Juul Labs, Inc*, 1:19-cv-11755, D.MA). is a class action seeking entirely injunctive relief, and specifically an order requiring the defendant to fund **the development and implementation of effective treatments for minors who have become addicted to nicotine through the use of Juul e-cigarettes**, and identify and provide funding for measures to prevent such youth from becoming addicted in the first place.

The role that PHAI seeks on the PSC is to identify and convene experts who are currently treating children who have become addicted to e-cigarettes, those who are researching approaches to treatment, and policy and prevention experts. Working with these experts, Lead Counsel and other members of the Plaintiff's Executive and Steering Committees, and potentially Defendant's counsel, our goal we will be to ensure to the greatest extent possible that public health relief results from the MDL. As a non-profit advocacy organization with enormous experience in tobacco litigation and as a long-established convener of attorneys and public health experts, PHAI is uniquely suited to serve this role on the PSC.

Consistent with the criteria that the Court has identified as relevant to selection for membership on the Plaintiff's Steering Committee, PHAI is willing and able to serve on the Steering Committee; willing

and able to work *immediately* on the litigation; willing and able to work cooperatively with other plaintiffs' counsel and defense counsel; and ready to deploy its substantial capabilities in tobacco litigation. As a long-established leader in tobacco control and prevention, we are in a unique position to undertake the important role of working with public health experts and other counsel to achieve constructive and significant relief for the victims of defendants' misconduct.

The following is illustrative of PHAI's extensive experience in tobacco litigation:

- a) PHAI Litigation Director Andrew Rainer is currently serving as one of the coordinating counsel in Massachusetts for smokers who became addicted to cigarettes after receiving free samples as children, including, for example, the successful case of *Greene v. Philip Morris USA, Inc.*, Civil Action 2015-1808 (Mass. Super Ct.)(Judge Helene Kazanjian, 781-239-2772)
- b) PHAI Executive Director Mark Gottlieb is currently serving as one of the coordinating counsel defending the bans on flavored tobacco and e-cigarette products that have been passed by cities and towns in Massachusetts, including, for example, the pending case of *Cumberland Farms, Inc. v. Boards of Health of Barnstable, Billerica, Framingham, Sharon, Somerville, and Walpole*, Civil Action 1984-CV-02017C (Mass. Super. Ct.)(Judge Robert Gordon, 617-788-8175)
- c) PHAI Litigation Director Andrew Rainer served as trial counsel in the successful Massachusetts class action claiming that Philip Morris engaged in unfair and deceptive practices in the marketing of Marlboro Lights, *Aspinall and Geanacopoulos v. Philip Morris USA, Inc.*, Civil Action No. 9884-cv-6002-BLS1 (Mass. Super. Ct.)(Judge Edward Leibensperger, retired)
- d) PHAI Founder and President Richard Daynard served as a consulting attorney in the successful appeal to the Massachusetts Supreme Judicial Court, establishing the applicability of the Restatement (3<sup>rd</sup>) of Torts to tobacco products liability claims in Massachusetts, *Evans v. Lorillard Tobacco Co.*, 465 Mass. 411 (2013)(Chief Justice Ralph Gants, 617-557-1000)
- e) PHAI sponsored the first test case in Massachusetts, including a successful appeal to the Massachusetts Supreme Judicial Court, seeking to impose liability on tobacco manufacturers for selling cigarettes to minors, *Kyte v. Philip Morris, Inc.*, 408 Mass. 162 (1990)(Chief Justice Wilkins, retired).

PHAI, and its attorneys, have also had the following experience in national and Multi-District Litigation cases:

- a) PHAI Founder and President Richard Daynard served on the Plaintiffs' Steering Committee in *Castano v. American Tobacco Co.*, the first nationwide class action asserting claims of unfair and deceptive trade practices against the major American tobacco companies. (Case was before Judge Okla Jones of the Eastern District of Louisiana, who is deceased). The case and the subsequent case of *Scott v. American Tobacco Co.*, 36 So. 3d 1046 (La. App. 4 Cir. 2010), ultimately resulted in cigarette manufacturers being required to fund smoking cessation services for class members statewide,
- b) PHAI Executive Director Mark Gottlieb filed an *amicus curiae* brief in the national opioid litigation, *In Re: National Prescription Opiate Litigation*, MDL 2804 (Judge Dan Aaron Polster, 216-357-7190) (Doc # 1607-1), asking that a portion of settlement funds should be set aside to create a national foundation to coordinate the public health response to the opioid crisis, noting how settlement funds in the state cigarette litigation failed to achieve the public health goals stated in the settlement.

c) PHAI Founder and President Richard Daynard and Litigation Director Andrew Rainer served on the Plaintiffs' Steering Committee in *In re Imagitas, Inc. Drivers Privacy Protection Act Litigation*, MDL 1828, multi-district litigation that was filed in Florida, Massachusetts, Minnesota, Missouri, New York, and Ohio, alleging the illegal disclosure to advertisers of personal information from drivers license records. The Judge supervising the MDL was Judge Timothy Corrigan, of the Middle District of Florida (Tel. 904-549-1300)

As more fully set forth in the attached resumes, PHAI also brings to the case an unrivaled depth of knowledge of the legal history of the tobacco industry:

PHAI Executive Director, Mark Gottlieb, has examined the public health concerns of e-cigarettes in peer-reviewed journals since before Defendants' product came to market. He has published on tobacco policy research in the Journal of the American Medical Association, The New England Journal of Medicine, Nicotine and Tobacco Research, The American Journal of Public Health, Tobacco Control, and others. In addition, he was a co-author on two Reports of the Surgeon General that addressed tobacco litigation as a public health strategy.

PHAI Founder and President, Richard Daynard, who is also a University Distinguished Professor of Law at Northeastern University, has been a prolific scholar on tobacco industry behavior and the role of litigation to change such behavior for decades. He has authored over 100 articles on this topic, co-authored several Surgeon General Reports as well as National Cancer Institute Monographs, and related book chapters. It has been over 30 years since Professor Daynard authored the game-changing commentary for the Journal of the National Cancer Institute, "Tobacco Liability Litigation as a Cancer Control Strategy," outlining a role for public health litigation in the fight against cancer.

In short, PHAI and its attorneys would bring a powerful mix of litigation experience and deep public health background to bear on the work of the Steering Committee to ensure that the MDL proceedings will have a positive public health impact on the young people at the heart of the JUUL crisis.

Sincerely,

/s/ Mark A. Gottlieb

Mark A. Gottlieb, Executive Director  
Andrew Rainer, Litigation Director